Supreme Court, U.S.
FILED
05-125 JUN 14 2005
OFFICE OF THE CLERK

No. _____

In The
Supreme Court of the United States

HERMAN ASTER, *Petitioner*,

vs.

ZDENKA ASTER, *Respondent*.

On Petition For Writ Of Certiorari
To The Court Of Appeal
For The State Of California Sixth Appellate District.

PETITION FOR WRIT OF CERTIORARI

The Petitioner
HERMAN ASTER,
2167 Riordan Drive
San Jose, California, 95130
Telephone (408) 378-1457

QUESTION PRESENTED FOR REVIEW

The family residence is in Judgment of Dissolution awarded to the petitioner. (7, App. 2) After lengthy litigation the respondent realized the Judgment couldn't be satisfied and moved to sell the house and, consequently, evict petitioner from his home.

The question: Should the Court of Appeals have power to affirm an Order violating Trial Court's own Judgment and in process violate protections granted in United Nations Universal Declaration of Human Rights.

PARTIES

The parties are
petitioner Herman Aster and
respondent Zdenka Aster represented by
attorney Dolly Ares, BN 87786,
514 Monterey Street, Hollister, CA 95023.
Phone: 831-637-6775, Fax 831-637-6779

CITATIONS OF ORDERS AND OPINIONS

	Date:	Appendix:
Judgment of dissolution	01/09/2001	1
Orders and Opinions filed in cases 1-99-FL086124 in Superior Court, H022230 in Court of Appeals, S107532 in Supreme California and 02-823 in Supreme Court of US	2001-2004	
Finding and Order After Hearing	04/20/2004	6
Appellate Opinion	01/21/2005	7
In Supreme Court CA review denied	03/30/2005	10

STATEMENT ON BASIS FOR JURISDICTION

In Court of Appeals:
Appellate Opinion entered January 21, 2005
Petition for Rehearing denied February 10, 2005
Motion to Recall Remittitur denied April 28, 2005

In Supreme Court of California:
Petition for Review denied March 30, 2005

Highest Court of the country is in jurisdiction where protections under United Nations Universal Declaration of Human Rights are at issue.

CONSTITUTIONAL AND STATUTORY PROVISIONS

United Nations Universal Declaration of Humane Rights:

Article 12 - Right to home

Article 25 - Protection in advanced age

Article 30 - Principal protection in signatory countries (App. 11)

STATEMENT OF THE CASE

This appeal is not challenging court Order (App. 6) to pay money. That is matter of separate appeal H027866. This appeal is in defense of petitioner's human rights, specifically right to live in his home in advanced age of seventy-one years.

Argued in Opening Brief, there was no Response Brief filed nor responsive oral argument presented. The Appellate Court ignored all relevant evidence and affirmed the Order. (App. 7)

The respondent interpreted correctly decision of Appellate Court as mandate to confiscate. (Letter App. 12)

Petition for Rehearing restating facts (App. 9) and Petition for Review to Supreme Court of California timely followed. Both denied.

REASONS FOR GRANTING THE PETITION

After six years of litigations, extortion and jailing the California's "No Fault Divorce Law" applied to advanced age marriage, where principal asset is modest family house, proved its capacity to violate petitioner's human rights. Failing to argue its immorality, defective application or even presence of special circumstances in preceding appeals on all levels of California courts the petitioner now faces eviction from his home. Only this court can intervene.

CONCLUSION

The petitioner begs The Supreme Court of United States to consider review of No Fault Divorce Law and affirm his right to live in his home for the rest of his days.

Respectfully submitted,

San Jose June 6, 2005 Herman Aster

App. 1

JUDGMENT OF DISSOLUTION

Trial Court:	Superior Court of California Santa Clara County, Dpt. 75
Case:	1-99-FL086124
Trial Judge:	Honorable Jamie Jacobs-May
Filed:	January 9, 2001

Marriage of Aster, Case No. 1-99-FL086124

1. Both parties waive their right to receive spousal support, and the Court's jurisdiction to award support to either party is hereby terminated.

2. Each party shall pay his or her own attorney fees and costs through date of trial.

3. Respondent shall reimburse Petitioner for one-half of sum of $475.00, representing the appraisal fee of Gene Hubbard.

4. The IRA/AARP account in Respondent's name in the approximate amount of $62,515 is awarded to Respondent as his sole and separate property.

5. The IRA/AARP account in Petitioner's name in the approximate amount of $62,521 is awarded to Petitioner as her sole and separate property.

6. Elizabeth Strassen shall be retained by the parties to prepare Qualified Domestic Relation Orders (QDROs) on the following accounts and each party shall pay one-half of the cost thereof:

a. 401K account with Franklin in Respondent's name in the approximate amount of $134,877.

b. 401K account with UBS in Respondent's name in approximate amount of $92,604.
c. 401K account with Putnam in Petitioner's name. The amount at the date of separation with accrued interest shall be divided and Petitioner shall be awarded her separate property interest representing any contributions plus interest made since date of separation to the date of division.

7. The real property located at 2167 Riordan Drive, San Jose, California shall be awarded to Respondent as his sole and separate property. Respondent shall pay to Petitioner one-half of the sum of $467,000, which is the agreed upon value of the property.

8. Rental Value: Respondent shall pay to Petitioner the sum of $11,450, representing one-half of the rental value of real property since date of separation to the date of trial.

9. The Respondent presented evidence regarding two annuities consisting of Zurich Life Insurance Company policy nos. 7,262.019 and 7,299.583. Respondent presented evidence to support his position that the value of the annuities was significant and almost equal to the value of the death benefit. After testimony, the Court made the following tentative ruling: The annuities are community property. The Court disagrees with the evidence presented by the Respondent and makes the following tentative ruling: The annuities shall be cashed in or the parties shall share the annuity benefits on an ongoing basis. If the Petitioner dies, the Respondent is entitled to full amount of the benefits. If the respondent dies , the Petitioner is entitled to full amount of the benefits. After the tentative ruling, the Respondent indicated to the Court that he wished to keep both annuities and that he would pay Petitioner her interest in the annuities. ~~The parties then entered into the following stipulation on record:~~ H.A. Respondent is awarded any and all benefits from said annuities during his lifetime. Said annuities are in Respondent's name and

Respondent shall not change any of the terms of said policies including, but not limited to, the death benefit portion of the policies. Respondent shall pay to Petitioner as and for her interest in said policies the sum of $172,500.

10. **Bank accounts:**

a. The Wells Fargo checking account No. 0572-202397 in approximate amount of $18.887, as well as First Albany Bank account No. 1237-0141 in approximate amount of $30,771 shall be divided equally between the parties.

b. The Downey Bank account no. 3996013300 and Citibank account no. 40008550531 have been previously divided between the parties.

c. The Valley Credit Union account no. 0000026968 in the amount of $628.25 shall be equally divided between the parties.

11. **Security Accounts:** The following security accounts shall be divided in kind between the parties:

a. BP/PB account, consisting of 3,000 shares, approximate value: $43,687.

b. Bristol Myers account Consisting of 1600 shares, approximate value of $85,800

c. IBM account no. 88550 and 90115 consisting of 1,608 shares, approximate value $201,402.

d. Exxon Mobil account consisting of 400 shares, approximate value $35,850.

e. Phillip Morris account consisting of 1,800 shares, approximate value $48,037.

f. Paine Webber account, consisting of 3200 shares of HB and 3200 shares of PSCO, with an approximate value of $145,453.

12. **Swiss accounts:** Petitioner presented evidence regarding Swiss accounts consisting of investment accounts PO280671.0, PO280671.1, as well as an investment account. Petitioner alleged that on June 25, approximately one

month prior separation, the investment account contained net asset of 136631 Swiss francs. Approximately one month after separation, the investment account was depleted. Respondent alleged that said funds had been used to purchase the second annuity or that he had no knowledge of what happened to the funds. The Court found that Petitioner had the burden of proving misappropriation of the funds by the Respondent and that Petitioner failed to carry her burden of proof. The Court did not preclude any remedies **under Family Code Section 2120 et seq.** which might be available to Petitioner subject to the statute of limitations therein.

13. The IBM pension is awarded to Respondent as his sole and separate property.

14. The parties agree that there was a South Africa checking account No. 001513753 and Escom bond R200,000. The parties entered into a Stipulation as follows: Respondent set value of said account in the amount of $5,000. Petitioner agreed to pay to Respondent the sum of $5,000, representing any and all interest that Respondent may have in the South Africa investment account. The South African account of R200,000 shall be awarded to Petitioner as her sole and separate property. Respondent shall do everything necessary to transfer said account to Petitioner's name.

15. The parties had an investment consisting of 100 gold Kruggerands. Respondent shall deliver to Petitioner one-half of said Kruggerands.

16. Petitioner is awarded the 1993 Honda Civic at the agreed upon value of $4,000; Respondent is awarded the 1987 Honda Civic at agreed upon value of $500.00.

17. **House hold Furniture & Furnishings:** Respondent agreed to return to Petitioner the following: Main bedroom: one picture by the door and one alarm clock; Zdenka's room: Sewing machine

and pictures which were wife's separate property; Sunroom: one-half of ornamental plates; Living room: One floor lamp, one wall clock from Africa, two pictures above couch, three ornamental plates, one-half of African and Czech ornaments, books and dictionaries, one-half of the audio and video tapes; Dining room: one picture above cabinet, four pieces of crystal; Kitchen: one clock radio, in house grille.
The parties have divided the family photo albums and Respondent has returned to Petitioner the family tree book. Respondent shall pay to Petitioner the sum of $1,000 as an agreed upon amount. All other household furniture and furnishing are awarded to Respondent as his sole and separate property.

18. **Premarital Contract:** Respondent presented evidence to the Court regarding an alleged premarital contract which he alleged was breached by the Petitioner and that he was therefore entitled to damages. Petitioner alleged that there was no premarital contract and that the alleged contract was in fact an agreement with the Catholic Church. After evidence was submitted, the Court ruled that the Respondent had no right to money damages for breach of the marriage contract.

19. **IBM stock:** Respondent alleged that IBM stock accounts 88550 and 90115 were his separate property. After evidence was presented, the Court ruled that said accounts were quasi-community property and were to be divided equally.

20. The equalizing payment payable by Respondent to Petitioner is payable forthwith and earns interest at the legal rate 10% as of date of trial, October 4, 2000.

DATED: 12/11/00 "s/ Justice May"
JUDGE OF THE SUPERIOR COURT

FINDINGS AND ORDER AFTER HEARING

Trial Court:	Superior Court of California Santa Clara Co.
Case:	1-99-FL086124
Heard:	Hon. Margaret Johnson, April 5, 2004
Signed:	Hon. G Randal Schneider, April 19, 2004 pursuant to Section 635 C.C.P.
Filed:	April 20, 2004

Findings and Order After Hearing, continued, Page 2:

Other Orders:

1. The Court finds that the Judgment of Dissolution is a final order. The Order of October 30, 2003 whereby the court found that the Respondent owes to the Petitioner the sum of $549,288.81 which included interest through October 10, 2003, is a valid Order. Additional interest has accrued, and the total amount owing to the Petitioner is in amount of $576,79. This includes interest through April 30, 2004.

2. Respondent shall have thirty days to make payment of all monies owing to the Petitioner. If said payment is not maid within 30 days, the real property located at 2167 Riordan Drive, San Jose, CA shall be sold in order for the Judgment to be satisfied.

3. The Court continues this matter to May 13, 2004 at 9:00 am for a review.
4. The issue of attorney's fees is reserved to the next hearing.

5. The Court grants Petitioner's request for sanctions in the amount of $5,842.20.

App. 7

APPELLATE OPINION

NOT TO BE PUBLISHED FILED Jan 21 2005
IN THE COURT OF APPEAL OT THE STATE OF
CALIFORNIA SIXTH APPELLATE DISTRICT
In re Marriage of ZDENKA and HERMAN ASTER
ZDENKA ASTER Respondent, HERMAN ASTER Appellant.
H027461 (Santa Clara County Super. Ct. No. FL086124)

Appellant Herman Aster filed this appeal in propria persona to challenge a family court order requiring him to pay money he owed to his former wife, Zdenka Aster. We will affirm the order.

Background

In judgment entered in January 2001, the family court granted dissolution of the parties' marriage and divided their assets, including stock and other securities. The court awarded the parties' house in San Jose to Herman, but Herman was required to pay Zdenka $467,000, of which the parties agreed was one-half the value of the property.

In March 2004 Zdenka moved for the sale of the family residence. In her accompanying declaration she stated that Herman had "failed to cooperate in the division of any property pursuant to the Judgment." Herman had, for example, refused to turn over original stock certificates that were necessary to divide the securities accounts. Zdenka asked the court for an order that the division take place without the stock certificates and that the house be sold so that she could collect the money Herman owed her. Herman opposed the motion and proposed instead that a lien on the house be released and that he take out a $233,500 loan on the property, to be paid to Zdenka upon transfer of title.

A hearing took place on April 5, 2004. The Clerk's transcript indicates that both parties were present. On April 20, the court filed its order. Referring to a previous order, which is not in the record on appeal, the court made the following findings: "The Order of October 30, 2003, Whereby the court found that

[Herman] owes to [Zdenka] the sum of $549,288.81 which included interest through October 10, 2003, is a valid Order. Additional interest has accrued, and the total amount owing [sic] to [Zdenka] is the amount of $576,752.79. This includes interest through April 30, 2004. [?] [Herman] shall have thirty days to make payment of all monies owing to [Zdenka]. If said payment is not made within thirty days, the real property ... shall be sold in order for the judgment to be satisfied." The court continued the matter to May 13, 2004 for a "review."

Discussion

Herman challenges the order for sale of the property, and he renews his request that the lien on the property be released. He offers no basis, however, for concluding that the order was erroneous. He states that the court was unaware of his counterproposal to obtain a loan on the house, but there is no evidence that the court did not read and consider his opposition to Zdenka's motion, in which he suggested that alternative. Herman also states that the order was signed without a hearing. The clerk's transcript indicates, however, that both parties were present in the court on April 5 2004, and that at the hearing the court expressly made the findings reflected in its subsequent order. {We have not been provided a reporters transcript}

We also observe that the order to sell property is *conditioned* upon Herman's failure to pay the money he owed Zdenka. Whether Herman did or did not pay Zdenka by May 13, 2004 is not in the record and is in any event beyond the scope of this court's review. Herman's challenge to the "Order to sell the property" is thus premature and without factual foundation.

Herman offers no other argument, fact, or authority on which this court could find error in the family court's order.

Disposition

The order is affirmed.

ELIA, J. WE CONCUR: RUSHING, P.J. PREMO, J.

PETITION FOR REHEARING

Court of Appeals CA Sixth Appellate District
H027461 (SCC Superior Court FL 086124)

The Appellant petitions for rehearing on the grounds of Omission or Misstatement of Issue or Fact.

Compensatory payment for the house, Herman is required to pay to Zdenka, is $233,500 and **not** $467,000 as assumed by the Court.

Statement of Zdenka, "Herman ... has failed to cooperate in division of **any** property pursuant to the Judgment" is apparent lie. However, no questions were raised in briefing or oral arguments.

Total sum of money **available** to pay compensatory payment $576,752 mandated by the entire Judgment is now matter of appeal H027866 currently fully briefed but not yet orally argued.

The Order to sell the house has been signed before any review hearing. Considering 30-day period for demanded payment and no compensation resolved to this date this Appeal is not premature.

Zdenka is using the Order as a vehicle of extortion to cover-up for defects in the Judgment herself to be blamed for. The Court, finding the Appellant in earlier appeal H022230 "sadly misdirected", is apparently failing to appreciate that, in the years since, his assertions became almost prophetic.

San Jose January 28, 2005.

"s/Herman Aster"

One page. (183 words)

App. 10

Court of Appeal, Sixth Appellate District No. H027461
S131703

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re Marriage of ZDENKA AND HERMAN ASTER

ZDENKA ASTER, Respondent,

v.

HERMAN ASTER, Appellant

Petition for review DENIED.

Supreme Court
FILED
MAR 30 2005
Frederick K. Ohlrloh
Clerk - Deputy

"s/ George "

Chief Justice

UNITED NATIONS
UNIVERSAL DECLARATION OF HUMAN RIGHTS

Article 12

No one shall be subjected to arbitrary interference with his privacy, family, **home** or correspondence, nor to attacks upon his honour and reputation. Everyone has the right tp the protection of the law against such an interference or attacks.

Article 25-1

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in event of unemployment, sickness, disability, widowhood, **old age** or lack of livelihood in circumstances beyond his control.

Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at destruction of any of the rights and freedoms set forth herein.

App. 12

LETTER

Stationary:
Dolly Ares Attorney at Law
514 Monterey Street, Hollister, CA 95023
Fax (831) 637-6779, Phone (831) 637-6775

February 3, 2005

Mr. Herman Aster
2167 Riordan Drive
San Jose, CA 95130

Re: Marriage of Aster

Dear Mr. Aster:

I have now received the Opinion from the Court of Appeal on your first appeal. The Opinion basically states that we can go forward with the sale of family residence. It would seem to me, Mr. Aster, that you should be willing at this time to be reasonable and attempt to work out some solution so that your residence does not have to be sold. Unless I hear from you within five days, I am going to go ahead and have the sheriff to proceed with the writ of execution for the sale of real property.

Yours very truly,

"s/ Dolly Ares"

DA/jm
Cc: Zdenka Aster
C:\MyFiles\Clients\Aster\Herman It5.wpd

No. 05-125

In The
Supreme Court of the United States

HERMAN ASTER, Petitioner,

vs.

ZDENKA ASTER, *Respondent.*

On Petition For Writ Of Certiorari
To The Court Of Appeal
For The State Of California Sixth Appellate District.

PETITION FOR REHEARING

The Petitioner
HERMAN ASTER,
2167 Riordan Drive
San Jose, California, 95130
Telephone (408) 378-1457

In the Case 05-125 Aster v. Aster

October 3, 2005 Petition for a writ of certiorari has been denied. The Chief Justice took no part in the consideration or decision of this petition.

The Petitioner begs for re-consideration of denial by the Court of nine justices with Chief Justice presiding.

San Jose October 6, 2005 Herman Aster

CERTIFICATION

This petition is presented in good faith. The petitioner came to this country to promise of justice and freedom from country of communist oppression where the respondent played the role of oppressor as explained and argued in earlier denied petition 02-823. It is the respondent, after 42 years of marital betray, to benefit from petitioner's eviction from his home. The matter deserves attention of full court.

This petition is not presented for delay. Taking in account this case is now in its seventh year in courts, the benefit gained from delay, if any, is not worth of consideration.

San Jose October 24, 2005 Herman Aster